



Appeal of Rernard J. and Elia C. Smith

Appellants' 1968 federal income tax return was audited by the Internal Revenue Service. As a result of the federal audit, the Internal Revenue Service disallowed a substantial amount of appellants' claimed deductions for legal expenses and a casualty loss and increased appellants' reported capital gain. Based upon the federal audit report, respondent issued a notice of proposed assessment in which it adjusted appellants' taxable income in accordance with California law. Appellants protested respondent's action and requested that further action be held in abeyance as appellants were pursuing the matter at the federal level. Thereafter, respondent attempted to ascertain the status of the federal proceedings. When appellants failed to respond to respondent's inquiries, respondent affirmed its proposed assessment which led to this appeal.

The sole issue for determination is whether respondent's determination which was based on corresponding federal action was erroneous.

Section 18451 of the Revenue and Taxation Code provides, in part, that a taxpayer shall either concede the accuracy of a federal determination or state wherein it is erroneous. It is well settled that a determination by the Franchise Tax Board based on a federal audit is presumed to be correct and the burden is on the taxpayer to overcome that presumption. (Todd v. McColgan, 89 Cal. App. 2d 509 [201 P.2d 414] (1949); Appeal of Willard D. and Esther J. Schoellerman, Cal. St. Bd. of Equal., Sect. 17, 1973.) Here, appellants have offered no evidence to indicate that the federal action was erroneous. Therefore, we must conclude that appellants have failed to carry their burden of proof and respondent's determination of additional tax for the year 1968 must be upheld.

Appeal of Bernard J. and Elia C. Smith

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, **ADJUDGED AND DECREED**, pursuant to section 19060 of the Revenue and Taxation Code,- that the action of the Franchise Tax Board in denying the claim of Bernard J. and Elia C. Smith for refund of personal income tax in the amount of \$5,324.70 for the year 1968, and pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Bernard J. and Elia C. Smith against a proposed assessment of interest in the amount of \$849.80 for the year 1968, be and the same are hereby sustained.

Done at Sacramento, California, this 9th day of **January**, 1979 , by the State Board of Equalization.

Stallman, Bernard A. Chairman
William H. Hall , Member
Leo R. Buey , Member
_____, Member
_____, Member